

Purpose of this briefing paper:

The Spokesman-Review newspaper recently has become interested in the criminal background review of Department of Social and Health Services (DSHS) employees, which began in 2002 and which now includes a pre-employment criminal and disciplinary board action background check before anyone may be appointed to a position in DSHS that involves work with children or other vulnerable clients.

This issue briefing summarizes the law and how it has been implemented at DSHS.

Who are DSHS clients?

The Department of Social and Health Services (DSHS) serves 1.5 million Washington residents – one in four people in our state.

Our mission is to improve the quality of life for individuals and families in need. We help people achieve safe, self-sufficient, healthy and secure lives.

We do this through partnerships all across Washington, involving well over 100,000 community partners – hospitals, clinics, mental health professionals, nursing facilities, boarding homes, child care centers, home care providers, foster and adoptive families, police officers, courts, guardians, court-appointed advocates, faith-based organizations, schools, job training programs, employers, mentors, state agencies and others.

Origins of the criminal background checks for care providers

In 2001, the Legislature made a major change in the laws relating to criminal background checks for employees who work with vulnerable people. Beginning in 1987, DSHS was required to perform criminal background checks on applicants for jobs with DSHS and with community-based care providers (such as nursing homes, boarding homes, child care with centers and foster homes) if the job involved access to children or vulnerable adults. However, that law did not require applicants to disclose a crime more than 10 years old, and it restricted DSHS from disqualifying an applicant on the basis of a felony that was more than 10 years old - or on the basis of a felony that was not directly related to the duties of the job. In 2001, the Legislature amended RCW 43.20A.710 and RCW 9.96A to require a new background check of current DSHS employees in covered positions - and to eliminate the 10-year restriction on felony offenses directly related to the duties of the job.

With the passage of the 2001 law, DSHS developed a careful process for investigating the backgrounds of more than 13,300 DSHS employees who worked with children and other vulnerable clients. Those jobs are called “covered positions.”

DSHS conducted that review in 2002, making that process as transparent as possible while respecting the privacy rights of individuals under state law and Constitution. DSHS issued a series of news releases at key points in the background review process. The results were widely reported in the news media. Here are links to the DSHS releases:

- <http://www1.dshs.wa.gov/mediareleases/2002/pr02055.shtml>
- <http://www1.dshs.wa.gov/mediareleases/2002/pr02080.shtml>
- <http://www1.dshs.wa.gov/mediareleases/2002/pr02168.shtml>
- <http://www1.dshs.wa.gov/mediareleases/2002/pr02366.shtml>

Today, DSHS conducts an average of 23,000 criminal background checks per month - approximately 2 percent of them for DSHS jobs and the rest for jobs with other employers.

It's important to note that the law does not forbid a person with a past criminal conviction from getting a job. It requires DSHS to consider the criminal history of its job applicants and employees in order to make an informed decision about their character, competence and suitability to care for vulnerable people. Under the law, DSHS may determine that a person with a past conviction is suitable for employment, after considering the nature of the past offense, the time elapsed since it occurred, and other factors.

Results of the 2002 criminal background review of DSHS employees

Twenty-seven employees out of the 13,314 checked had records that prevented them from holding covered positions in DSHS. They were therefore disqualified from having unsupervised contact with children, juveniles or vulnerable adults as part of their duties.

Disqualifying crimes found during the background checks included assault, forgery, robbery, theft, drug violations, rape, incest and child molestation. Among the other disqualifying actions discovered during the checks was the loss of a professional license.

The law also afforded employees found to have disqualifying criminal records a due-process right to provide mitigating information before being removed from a covered position. DSHS established a review panel to consider such issues as the nature of the crime, whether the employee tried to conceal it and the amount of time that had elapsed since the crime.



Initially, background check results identified 201 employees who were disqualified, but 192 of them exercised their right to a mitigating circumstances review. The due-process review determined that 174 had mitigating circumstances that allowed them to remain in covered positions. The remaining 27 employees were removed from covered positions.

High-ranking DSHS administrators who are experts in the care and protection of vulnerable clients served on this review panel. They reviewed records that were available to DSHS regarding the criminal histories of public employees who appealed initial findings.

To maintain objectivity of the process and to protect employee privacy rights, the review panel evaluated the factual information without knowing the identity of the employee unless he or she elected to come before the panel and present a case for retention in their job.

DSHS's policy and practice of fully complying with disclosure and privacy laws

Following the review, news organizations requested and received details of the criminal records on the employees who were allowed to continue employment with DSHS. These included violent crimes such as homicide and statutory rape that, because of the surrounding circumstances, did not disqualify an individual from holding the position at issue.

DSHS takes seriously the public's right to know how it conducts business. It is our policy and practice to release records of misconduct or discipline on the job; court decisions have held that these records are subject to public disclosure.

However, DSHS officials believe they cannot divulge the names of specific employees along with criminal conviction information if the employees have been allowed to continue their employment. To do so would violate employee privacy rights that are protected by the public disclosure law.

What is new about this issue, 3 years after the DSHS criminal background review of employees?

The Spokesman-Review became interested in the backgrounds of DSHS employees with past criminal offenses following an incident in 2004 at Eastern State Hospital in Medical Lake, one of two mental health hospitals operated by DSHS.

Last June, Eastern State Hospital reported to the Washington State Patrol allegations that a male nurse named Guy Johnston had raped a female patient.

State Patrol detectives arrested Johnston and he was charged with rape. Hal Wilson, chief executive officer at Eastern State Hospital, immediately barred Johnston from the facility and he subsequently was fired. The criminal rape charge resulted in a hung jury on Feb. 18, 2005. Spokane County prosecutors said he is scheduled to be retried in June.

During the 2002 DSHS employee criminal background review, this nurse had disclosed a malicious mischief conviction that had occurred five years earlier. The DSHS panel reviewed available records regarding the nature of the nurse's criminal offense and the time that had elapsed since the conviction. No other convictions appeared in a check of Johnston's State Patrol records.

The review determined that, in light of the available information about his record, the malicious mischief conviction did not disqualify him from continuing to serve at the hospital.

Starting in November 2004, the Spokesman-Review asked DSHS to provide records from the 2002 criminal background review of then-current DSHS employees. As it had in response to earlier media requests, DSHS released to the Spokane newspaper all disclosable records that were requested – including descriptions of the criminal convictions and the part of DSHS where those employees worked.

As was the case in 2002, DSHS concluded that it could not divulge the identities of the employees who had not been subject to any disciplinary action and whose past crimes had been determined to have no effect on their job performance. The Spokesman-Review disputes this response and argues that it has the right to these names and records. [See more detailed analysis of disclosable and non-disclosable employee records.](#)

Are we safe having care providers who have committed a crime?

The law requiring criminal background checks does not presume that a criminal background precludes a social service provider from providing safe care and service to Washington residents.

The law recognizes that there may have been mitigating circumstances that the employer should consider in making an informed hiring decision.

At DSHS in 2002, top administrators reviewed investigative records were available to DSHS, and used professional judgment in making decisions about criminal history and licensing actions that disqualified employees from continuing to serve. They did so with the health and safety of clients foremost in importance.

It is exceedingly rare for a DSHS employee to be charged with harming a client. If DSHS becomes aware of a threat to clients or others, the agency takes prompt action to remove that person while an investigation is completed. Where warranted, employees are removed from contact with clients, or discharged.

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